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U.S. DISTRICT COURT

John O. Graham
Appellant

No. 600

JOHN O. GRAHAM, Commissioner,
Department of Public Welfare,
State of Arizona,

Appellant.

versus

CARMEN RICHARDSON, for herself
and for all others similarly
situated,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF ARIZONA

JURISDICTIONAL STATEMENT

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Announcement of Court of the Arizona Statutes

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. _____

JOHN O. GRAHAM, Commissioner,
Department of Public Welfare,
State of Arizona,

Appellant,

versus

CARMEN RICHARDSON, for herself
and for all others similarly
situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF ARIZONA

OPINION BELOW

The opinion of the three judge District Court has not yet been officially reported. A copy of that opinion and order is set forth in Appendix A.

JURISDICTION

This is an appeal from the amended judgment of a three judge District Court declaring Arizona's U. S. citizenship as well as the fifteen (15) year durational residency requirements provided by A.R.S. §§ 46-233(A)(1), 46-252(2)), 46-272(4), as amended, unconstitutional and permanently enjoining appellant from enforcing those provisions. The court originally entered an opinion and order on May 27, 1970. Following a stipulation between the parties, the court withdrew its first judgment and issued and entered an amended judgment dated June 26, 1970. The notice of appeal was filed on July 9, 1970 in the U. S. District Court, District of Arizona. See Appendix B. On July 20, 1970, the U. S. District Court ordered the amended judgment stayed pending review by this Court.

This appeal is taken from the amended judgment of June 26, 1970 which is set forth in Appendix C.

This Court has jurisdiction by virtue of 28 U.S.C. § 1253.

STATUTORY PROVISIONS INVOLVED

"A.R.S. § 46-233. *Eligibility for general assistance*

"A. No person shall be entitled to general assistance who does not meet and maintain the following requirements:

"1. Is a citizen of the United States, or has resided in the United States a total of fifteen years."

"A.R.S. § 46-272. *Eligibility for blind assistance*

"Assistance shall be granted to any person who meets and maintains the following requirements:

"4. Is a citizen of the United States, or has resided in the United States a total of fifteen years."

"A.R.S. § 46-252. *Eligibility for old age assistance*

"Assistance shall be granted under this article to any person who meets and maintains the following requirements:

"2. Is a citizen of the United States, or has resided in the United States a total of fifteen years."

QUESTIONS PRESENTED

42 U.S.C. § 1352(b) (2), Aid to the Permanently and Totally Disabled, gives the Secretary (of Health, Education and Welfare) authority to approve any welfare plan which fulfills conditions specified in subsection (a) of that act, except he shall not approve any plan imposing any citizenship requirement which excludes any citizen of the United States. There are similar provisions for Old Age Assistance, 42 U.S.C. § 302(b) (3); Aid to the Blind, 42 U.S.C. § 1202(b) (2); Aid to the Aged, Blind or Disabled, 42 U.S.C. § 1382(b) (2). Pursuant to 42 U.S.C. § 1302 the Secretary has published a Handbook of Public Assistance Administration which part IV §§ 3720 and 3730 read as follows:

"A state plan under titles I, X, XIV and XVI may not impose, as a condition of eligibility, any citizenship requirement which excludes any citizen of the United States

"Where there is an eligibility requirement applicable to non-citizens, state laws may, as an alternative to excluding all non-citizens, provide for qualifying non-citizens, otherwise eligible, who have resided in the United States for a specified number of years."

The questions presented are:

1. Whether, in its application to these appellees, Arizona Revised Statutes §§ 46-233.A.1., 46-252.2., 46-272.4. enacted pursuant to Federal Law are violative of the United States Constitution in that they constitute:

A. An undue burden on appellees' right to travel;

B. An infringement of the equal protection clause contained in the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Carmen Richardson, the named plaintiff, is a lawfully admitted alien. She has been a continuous resident of the State of Arizona for thirteen years. Mrs. Richardson was sixty-four years and nine months of age at the time of the filing of the complaint. Prior to the District Court decision she was eligible for benefits under

the Aid to the Permanently and Totally Disabled (APTD) or Old Age Assistance (OAA) but for the U.S. citizenship requirement or, in lieu of U.S. citizenship, the fifteen year residency requirement for aliens provided by Arizona law.

Plaintiff brought this as a class action attacking the constitutionality of these provisions of Arizona welfare laws: (1) General assistance, (2) Assistance for the blind, and (3) Old age assistance (*supra*). The claimed infirmity in all the Arizona statutes mentioned *supra* is the U. S. citizenship requirement or, in lieu of U. S. citizenship, the fifteen year residency requirement for aliens violates the constitutional right to travel, *Shapiro v. Thompson*, 394 U.S. 618 (1969), and the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

Both parties moved for summary judgment before a three judge District Court convened pursuant to 28 U.S.C. §§ 2281 and 2284. Jurisdiction was conferred upon the Court by 28 U.S.C. §§ 1343, 2201, 2202 and 42 U.S.C. § 1983.

On May 27, 1970 the court filed an opinion granting plaintiffs' motion and relying on *Shapiro v. Thompson*, *supra*, *Dandridge v. Williams*, 397 U. S. 471 (1970) and *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948) held that Arizona Revised Statutes §§ 46-233.A.1., 46-252.2. and 46-272.4. violate the equal protection clause of the Fourteenth Amendment and constituted an impermissible burden on plaintiffs' constitutional right to travel.

THE QUESTIONS ARE SUBSTANTIAL AND JURISDICTION SHOULD BE NOTED

Any time any aspect of an important state statute is declared unconstitutional by a Federal court, the issue can hardly be said to be anything but substantial. Similarly, whenever a three judge Federal District Court enjoins the enforcement of an important state statute and the only appeal from that order is to this Court, the issue is substantial. The issue in this case is far too important

for the holding of the District Court to be both the first and last word on the matter. A question of this stature deserves at least one appellate review.

Statutes providing for appeals directly to this Court are intended by Congress as a procedural protection against "an improvident state-wide doom by a federal court of a state's legislative policy" whether "such policy is defined in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission.'" *Phillips v. United States*, 312 U.S. 246, 251 (1941). The precise situation calling for that procedural protection is presented. This Court can provide the necessary protection by noting jurisdiction.

It is well settled that one of the most important factors to be taken into consideration in determining the substantiality of federal questions presented to this Court on appeal is a conflict among the lower courts on the precise question presented. The predicament of the State of Arizona is representative. Arizona is not unique in restricting welfare payments. See Appendix D. There are similar cases pending in other jurisdictions. *Leger v. Saler*, No. 69-2869 (D.C.E.D.-Penn.); *Gonzales v. Shea*, No. C-1920 (D.C.-Colo.); *Nikolits v. Bax*, (D.C.S.D.-Fla.) No. An answer is needed from this Court to lay the issue to rest.

The District Court's decision will have far reaching effects. Aliens are not citizens. The thin line between citizenship rights and alien rights is not clear. It is well settled that aliens have never had the same rights and privileges as citizens. To mention only a few, aliens cannot vote, A.R.S. § 16-101.A.(1); hold certain employment, Arizona Constitution, Art. XVIII, § 10; or serve on a jury, A.R.S. § 21-201. It is clear aliens do not occupy the same position as citizens. See *McCreaty v. Va.*, 94 U.S. 391 (1876); *Patson v. Penn.*, 232 U.S. 138 (1914); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952). In *Truax v. Raich*, 239 U.S. 33 (1915) this Court struck down portions of Arizona's employment laws

which favored citizens over aliens. However, the Court limited its holding considerably by the following language:

"The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the state, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other states."

It is submitted that Arizona's welfare laws fit into the exception promulgated by this Court in *Truax*, *supra*.

The court's opinion below is completely devoid of any reasoning or guidelines which the appellant might use as the basis for determining how he might properly, if at all, go about establishing reasonable requirements for aliens.

Congress has entrusted exclusive responsibility for surveillance of state welfare plans to the Secretary of Health, Education, and Welfare. *Rosado v. Wyman*, 397 U.S. 397 (1970) dissenting opinion. The Secretary has approved Arizona's plan as complying with Federal Law. See letter of Robert Finch, former Secretary of Health, Education, and Welfare, Appendix E.

Arizona's alien eligibility requirements have not been promulgated at the mere whim of the state legislature. They have been subject to constant federal scrutiny. These requirements are worthy of at least one appellate review. If this Court refuses to hear this appeal, then the issue of alien eligibility requirements will remain clouded. As a consequence, Arizona will be deprived of ever having an appellate court rule on the matter in this case.

Relying heavily on the authority of *Shapiro v. Thompson*, *supra*, the District Court struck down Arizona's eligibility requirements for aliens holding the regulations violated the constitutional right to travel. The language of this court in *Shapiro v. Thompson*, *supra* indicates such a result was unwarranted.

"This court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all *citizens* be free to travel throughout the

length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this right." (emphasis ours)

It is interesting to note that all cases referring to the right to travel make specific reference to citizens. *Passenger Cases*, 7 How. 283 (1849); *Kent v. Dulles*, 357 U.S. 116, 125 (1958). The court has also based the right to travel on the privileges and immunities clause of Art. IV, § 2 of the Constitution, see *Corfield v. Coryell*, 6 Fed. Cases 546, 552 (1823); *Paul v. Virginia*, 8 Wall 168, 180 (1869); *Ward v. Maryland*, 12 Wall 418 (1871). The privileges and immunities clause, however, explicitly refers to citizens. In *Edwards v. California*, 314 U.S. 160 at 181 (1941) Justice Douglas said:

"The right to move freely from state to state is an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference." (emphasis ours)

Even if this Court should find that aliens have the constitutional right to travel, it is difficult to see how Arizona's *national* residency requirement infringes on that right.

Arizona's welfare laws have been criticized as being socially unjust and uneconomical. These criticisms, valid or invalid, are not the concern of the federal judiciary.

"Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court." *Dandridge v. Williams*, *supra*.

CONCLUSION

The lower court's decision is unclear. It holds Arizona's eligibility requirements for aliens are violative of the equal protection clause and the constitutional right to travel but it is unclear whether Arizona must provide any welfare benefits for aliens. If a limitation is to be recognized — as Arizona feels it should —

the dividing line must be drawn. It would be an anomalous situation if Arizona could exclude aliens from welfare programs altogether but, in the alternative, could not provide a time limitation for eligibility.

In view of the importance of the question concerning the way the Arizona Welfare Department administers the Social Security Act, the economic significance of the problem, and the likelihood of a conflict developing between the circuits, it is urged that jurisdiction be noted.

Whether the ruling is in favor of the appellant or the appellees is not nearly so important as the fact of the ruling itself. If jurisdiction is not noted, Arizona will be deprived of appellate review.

It is respectfully prayed this Court review the amended judgment of the District Court.

Respectfully submitted.

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APPENDIX A
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CARMEN RICHARDSON, for
herself and for all others
similarly situated,

Plaintiff,

vs

JOHN O. GRAHAM, Commissioner,
Department of Public Welfare,
State of Arizona,

Defendant,

No. CIV 69-158 Tuc.
Opinion and Order

MUECKE, D. J.

The undisputed facts are:

The named plaintiff, Carmen Richardson, is an alien lawfully admitted to the United States under the laws of this country. She has been continuously a resident of the State of Arizona for thirteen years. Mrs. Richardson was sixty-four years and nine months of age at the time of the filing of the complaint. She fulfilled the age requirement for Old Age Assistance (OAA) in October of 1969. Presently, she is permanently and totally disabled and would be eligible for assistance under the Aid to the Permanently and Totally Disabled (APTD) program but for the fifteen-year residency requirement of Arizona law. By reason of this law, she is ineligible to receive APTD assistance and suffers irreparable injury, as presently she has no income whatsoever and exists on charity on the part of neighbors and friends.

Plaintiff, in this class action, attacks the constitutionality of

three provisions of Arizona welfare law: (1) General assistance;¹ (2) Assistance for the blind;² and (3) Old age assistance.³

The Court has jurisdiction of this action by virtue of 42 U.S.C. § 1983 (Civil Rights Act of 1871), 28 U.S.C. § 1343 (Civil Rights), 28 U.S.C. §§ 2201 and 2202 Declaratory Judgments Act), and 28 U.S.C. §§ 2281 and 2284 (Three Judge Courts).

The claimed infirmity in all the Arizona statutes is that a fifteen-year residency requirement for resident aliens violates the constitutional right to travel, *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 2d 600 (1969); the Social Security Act; and, even though Congress may have empowered the states to act in this area, the equal protection clause of the Fourteenth Amendment. It is also argued that the field of regulating aliens has been preempted by the federal government.

42 U.S.C. § 1352(b)(2) provides that "(t)he Secretary (of Health, Education and Welfare) shall approve any welfare plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to the permanently and totally disabled under the plan . . . (a)ny citizenship requirement which excludes any citizen of the United States."

There are similar provisions for Old Age Assistance, 42 U.S.C.

¹ A.R.S. § 46-233. *Eligibility for general assistance*

A. No person shall be entitled to general assistance who does not meet and maintain the following requirement:

1. Is a citizen of the United States, or has resided in the United States a total of fifteen years.

² A.R.S. § 46-272. *Eligibility for blind assistance*

Assistance shall be granted to any person who meets and maintains the following requirement:

4. Is a citizen of the United States, or has resided in the United States a total of fifteen years.

³ A.R.S. § 46-252. *Eligibility for old age assistance*

Assistance shall be granted under this article to any person who meets and maintains the following requirement:

2. Is a citizen of the United States, or has resided in the United States a total of fifteen years.

§ 302(b)(3); Aid to the Blind, 42 U.S.C. § 1202(b)(2); Aid to the Aged, Blind or Disabled, 42 U.S.C. § 1382(b)(2).

In the same title of the United States Code, § 1302, Congress authorized the Secretary of Health, Education and Welfare to make such rules as may be necessary to the administration of the Welfare Act. Pursuant to this authority, the Secretary has published a Handbook of Public Assistance Administration.⁴ Sections 3720 and 3730, Part IV of this Handbook read respectively as follows:

"A state plan under titles I, X, XIV (aid to permanently and totally disabled) and XVI may not impose, as a condition of eligibility, any citizenship requirement which excludes any citizen of the United States.

"Where there is an eligibility requirement applicable to non-citizens, State laws may, as an alternative to excluding all non-citizens, provide for qualifying noncitizens, otherwise eligible, who have resided in the United States for a specified number of years."

Relying on the statutes and the regulations cited, the State herein argues that Congress by itself and through the Department of Health, Education and Welfare has authorized the States to require citizenship as a basis for eligibility for welfare benefits. In other words, the State takes the position that either no welfare benefits need be given resident aliens or else a residency requirement may be imposed as is the case here.

Buttressing this view, according to the State, is the United States Supreme Court decision in *Truax v. Raich*, 239 U.S. 33, 36 S.Ct. 7, 60 L.Ed. 131 (1915), wherein it is stated:

"... The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the state, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other states. . . ." *Truax v. Raich*, 239 U.S. at 39, 36 S.Ct. at 10, 60 L.Ed. at"

⁴ See § 201.3(d), Title 45, Code of Federal Regulations.

Responding to such argument by the State, we hold that nothing in the explicit language of 42 U.S.C. § 1352(b)(2) and the related statutes authorizes any residency requirement such as is at issue here to be imposed by the states upon aliens. Insofar as the language of 42 U.S.C. § 1352(b)(2), 42 U.S.C. § 302(b)(3), 42 U.S.C. § 1202(2), and 42 U.S.C. § 1382(b)(2) is construed to mean that the State is empowered to impose a fifteen-year residency requirement before an alien lawfully resident in the United States can receive aid, we further hold that such a construction is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

The quoted paragraph from *Truax v. Raich*, *supra*, is dicta not necessary to the decision in that case, and the language is too general to serve as authority to support the residency restriction here imposed. In any event, later decisions of the United States Supreme Court make clear the course to be followed in this case.

In *Shapiro v. Thompson*, *supra*, the Supreme Court discussed the equivalent provisions for Aid to Families with Dependent Children (§ 402(b)) which dealt with a one-year residency requirement.

On its face, the statute does not approve, much less prescribe, a one-year requirement. It merely directs the Secretary of Health, Education, and Welfare not to disapprove plans submitted by the States because they include such a requirement. . . . But even if we were to assume, *arguendo*, that Congress did approve the imposition of a one-year waiting period, it is the responsive *state* legislation which infringes constitutional rights. By itself § 402(b) has absolutely no restrictive effect. It is therefore not that statute but only the state requirements which pose the constitutional question.

Finally, even if it could be argued that the constitutionality of § 402(b) is somehow at issue here, it follows from what we have said that the provision, insofar as it permits the one-year waiting period requirement, would be unconstitutional. Congress may not authorize the States to violate the Equal Protec-

tion Clause. *Shapiro v. Thompson, supra*, 394 U.S. at 639, 89 S.Ct. a 1334, 22 L.Ed at (emphasis in original).

No compelling state interest is argued which would mitigate in favor of a different result. Petitioner pays taxes into the coffers of the State. The "privilege" v. "right" argument does not answer the constitutional challenge. *Thompson, supra* n.6, 394 U.S. at 627, 89 S.Ct. at 1327, 22 L.Ed.2d at The "purpose of inhibiting migration by needy persons into the State is constitutionally impermissible." *Thompson, supra*, 394 U.S. at 629, 89 S.Ct. at 1329, 22 L.Ed.2d at Although the "State has a valid interest in preserving the fiscal integrity of its programs . . . it may not accomplish such a purpose by invidious distinctions. . . ." *Thompson, supra*, 394 U.S. at 633, 89 S.Ct. at 1330, 22 L.Ed.2d at See also *Dandridge v. Williams*, U.S., 90 S.Ct., L.Ed.2d, slip opinion at 13 (No. 131, April 6, 1970).

In light of *Takahashi v. Fish and Game Commission*, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478 (1948) and *Shapiro v. Thompson, supra*, it necessarily follows that the Arizona statutes previously cited,⁵ imposing a fifteen-year residency requirement, are violative of the equal protection clause of the Fourteenth Amendment.

Accordingly, plaintiff's motion for summary judgment praying for a preliminary injunction and declaratory relief is granted.

⁵ A.R.S. 46-233, 46-272, and 46-252.

DATE this 27 day of May, 1970.

(signed) _____
Gilbert H. Jertberg,
Circuit Judge

(signed) _____
James A. Walsh,
District Judge

(signed) _____
C. A. Muecke,
District Judge

APPENDIX B

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONACARMEN RICHARDSON, for
herself and for all others
similarly situated,

Plaintiffs,

v.

JOHN O. GRAHAM, Commis-
sioner, Department of Public
Welfare, State of Arizona,

Defendant.

No. CIV 69-158
TUC.NOTICE OF APPEAL
TO THE SUPREME
COURT OF THE
UNITED STATES

I

NOTICE IS HEREBY GIVEN that JOHN O. GRAHAM,
Commissioner of the Department of Public Welfare, State of

Arizona, the Defendant above named, hereby appeals to the Supreme Court of the United States from the amended judgment of this Court in favor of the Plaintiffs and against the Defendant, dated and entered June 26, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II

The Clerk will please prepare a transcript of the entire record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the reporter's transcript of the oral argument.

FILED this 8th day of July, 1970.

GARY K. NELSON
The Attorney General

(signed) _____

MICHAEL S. FLAM,
Special Assistant
Attorney General
1624 West Adams Street
Phoenix, Arizona 85007

PROOF OF SERVICE

I, GARY K. NELSON, the Attorney General of the State of Arizona, attorney for John O. Graham, Commissioner of the Department of Public Welfare, State of Arizona, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 8th day of July, 1970, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the Appellee, CARMEN RICHARDSON, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to their attorney of record as follows:

Anthony B. Ching
Chief Trial Counsel
Legal Aid Society of Pima County
55 West Congress Street
Tucson, Arizona 85701

(signed) _____

GARY K. NELSON
The Attorney General

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CARMEN RICHARDSON, for
herself and for all others
similarly situated,

Plaintiffs,

vs.

JOHN O. GRAHAM, Commis-
sioner, Department of Public
Welfare, State of Arizona,

Defendant.

No. CIV 69-158
Tuc.

AMENDED
JUDGMENT

This action came on for hearing on Plaintiffs' motion for summary judgment and defendant's cross-motion for summary judgment before the Court, Honorable Gilbert H. Jertberg, Circuit Judge; Honorable C. A. Muecke, District Judge; and Honorable James A. Walsh, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered on May 27, 1970,

IT IS ORDERED AND ADJUDGED as follows:

(1) That pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, the action is to be maintained as a class action, all in accordance with Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

(2) That the class of plaintiffs is described as follows:

Those persons residing in the State of Arizona, who are not United States citizens, but who are lawfully admitted to the United States as permanent residents by the Federal government,

who are otherwise eligible for old age assistance, general assistance, blind assistance and aid to the permanently and totally disabled public welfare programs under the laws of Arizona, but are precluded from obtaining these benefits solely because of their being non-citizens and the lack of a total of fifteen years residency in the United States.

(3) That judgment be rendered in favor of the plaintiffs and against the defendant.

(4) That as to the plaintiffs, the United States citizenship requirement, as well as the fifteen-year durational residency requirement in the United States, as provided for in Arizona Revised Statutes §§ 46-233(A)(1), 46-252(2) and 46-272(4), as amended, are declared unconstitutional as violative of the due process clause and the equal protection clause of the Fourteenth Amendment to the United States Constitution.

(5) That defendant and his successors, agents and employees are hereby permanently enjoined from enforcing the United States citizenship requirement, as well as the fifteen-year durational residency requirement, as to the plaintiffs.

DATED this 26th day of June, 1970.

(signed) _____
Gilbert H. Jertberg,
Circuit Judge

(signed) _____
James A. Walsh,
District Judge

(signed) _____
C. A. Muecke,
District Judge

APPROVED AS TO FORM:

GARY K. NELSON
The Attorney General

By: (signed) 6/16/70

Michael S. Flam
Special Assistant Attorney General
Attorney for Defendant

APPENDIX D

CITIZENSHIP AS AN ELIGIBILITY FACTOR IN
FEDERAL-STATE PUBLIC ASSISTANCE PROGRAMS

Based on *Characteristics of State Public Assistance Plans*,
with revisions as reported June 30, 1968*
(no further changes reported 11/20/69)

"Must be a citizen of the United States . . ." except as specified:
Unduplicated Total 8 States

Old-Age Assistance (8 States)	Aid to the Blind (5 States)
Arizona ¹	Arizona ¹
Colorado
Florida ²	Florida ²
Indiana	Indiana
New Hampshire ³
North Dakota ⁴	North Dakota ⁴
South Carolina
Texas ⁵	Texas

¹ — or resident of the United States for a total of 15 years

² — or resident of United States for at least 20 years

³ — "(a woman who lost citizenship by marriage between March 2, 1907, and September 22, 1922, is construed to be a citizen); or an alien who has resided continuously in United States for 10 years with 1 year immediately preceding application in New Hampshire." (7/1/67)

⁴ — or has resided 10 years in the United States

⁵ — or has resided within the boundaries of the United States for 25 years

Aid to the Permanently and Totally Disabled (5 States)	Aid to Families with Dependant Children (1 State)
Arizona ¹
.
Florida ²
.
New Hampshire
North Dakota ⁴
.
Texas	Texas ⁶

⁶ — citizenship not required of parent of caretaker, though children must be citizens. (12-31-67).

- Source of Information:
DEPT. HEALTH, EDUCATION, WELFARE
Social and Rehabilitation Service
Assistance Payments Administration

Citations to State Laws as Basis for Citizenship Requirement as an Eligibility Factor — 8 States (To accompany Table "Citizenship as an Eligibility Factor in Federal-State Public Assistance Plans").

State	Citation and Categorical Program
Arizona	Arizona Revised Statutes: Title 46, OAA — 252; AB — 272; APTD — 233
Colorado	Colorado Revised Statutes — 1963: 101-1-4
Florida	Florida Statutes Annotated: Section 409, OAA — 409.12. AB — 409.17; APTD — 409.40
Indiana	Burns Indiana Statutes: OAA — 52-1201; AB — 52-1221
New Hampshire	New Hampshire Revised Statutes Annotated, Volume 2, 167: 6 OAA and APTD
South Carolina	Code of Laws of South Carolina: OAA — Sec. 71-81
Texas	Vernon's Texas Civil Statutes: OAA — Chapter 71, Laws 1967, S. B. 45, amending Article 695c, Section 20 to add "or has resided . . . at least twenty-five years;" (State's PA Plan was amended effective 9/1/67). AB — Article 695c, Section 12 APTD — Article 695c, Section 16-B AFDC — Article 695c, Section 17

APPENDIX E

(seal)

THE SECRETARY OF HEALTH,
EDUCATION, AND WELFARE
Washington, D. C. 20201

Nov. 10, 1969

Dear Barry:

Thank you for your letter of September 29, 1969, on behalf of Mr. Anthony B. Ching of Tucson, who suggests that there is a conflict between Arizona law and Federal law regarding Arizona's provision that participation in the adult public assistance programs is limited to individuals who are citizens of the United States or who have been residents of the United States for a total of 15 years. We do not believe that there is any conflict.

The Arizona provision is not required by Federal law. If Arizona were to drop this provision, and pay assistance to any otherwise eligible individual, whether citizen or alien, there would be no Federal question, and Federal matching would be available for the resulting payments under the State's programs.

On the other hand, the Arizona provision is not precluded by Federal law. Titles I, X, and XIV of the Social Security Act specify that the Secretary shall not approve a State public assistance plan which imposes any citizenship requirement which excludes any citizen of the United States. States, at their option, may exclude non-citizens. We view the Arizona provision, which excludes a noncitizen who has not resided in the United States for a total of 15 years, as a permissible citizenship requirement which Arizona may choose to impose.

The recent decision of the United States Supreme Court in the case of *Thompson v. Shapiro* prohibited the States from imposing requirements of durational residence *in the State* as a condition of eligibility for public assistance. We do not read this case as

precluding citizenship requirements which apply to aliens who have not resided *in the United States* for a specified period.

The problem of the exclusion of certain aliens from Arizona's programs could, of course, be solved in several ways: 1) a change in the Arizona provision; 2) a change in the Federal law; or 3) an extension by the courts of the decision in the *Thompson* case. I appreciate the opportunity to review the claims of Mr. Ching and respond to the problem.

With best wishes,

(signed Bob Finch)

Secretary

Honorable Barry Goldwater
United States Senate
Washington, D. C.